IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929

Crl.Rev.Pet.No. 244 of 2000()

CC.379/1996 of JUDL. MAGISTRATE OF FIRST CLASS COURT, CHAVAKKAD
CRA.67/1998 of SESSIONS COURT, THRISSUR

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REVN. PETITIONER/APPELLANT/ACCUSED:

GAFOOR,S/O.PAYAKKAD KARIM,
EDAKKAZHIYOOR DESOM, PUNNAYOOR VILLAGE,
THRISSUR DISTRICT.

BY ADV. SRI.P.VIJAYA BHANU
SRI.S.R.MANOJ

RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERALA, REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.P.N.SUKUMARAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 26/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B.KOSHY, J.

Criminal R.P.No.244 OF 2000 ()

Dated this the 26th day of September, 2007

O R D E R

Revision petitioner was the accused in C.C.No.379/1996 on the file of Judicial First Class Magistrate Court, Chavakkad. According to the prosecution, on 7.6.1996, at about 12 0' clock accused wrongfully restrained PW2 by catching her hair, pushed her down, sat on her body and pressed on her breasts and kissed her and thereby outraged her modesty. Place of occurrence is at Edakkazhiyoor near Siddique mosque and near the house of one Majeed. CW1 who is the mother of the victim gave a complaint to the District Superintendent of Police, Thrissur. PW2 was the affected girl of 18 years at the time of incident. On getting the complaint on 15.6.1996 Superintendent of Police directed the Circle Inspector of Police to register the case. After enquiry case was registered only on 22.6.1996 after investigation. PWs.1 and 2 were Tamil migrant workers. PWs.3 and 4 had allegedly witnessed

the occurrence and turned hostile. PW4 did not support the prosecution case fully. Ext.P1 shows that he was a good samaritan who came to the scene seeing the accused indulging in the crime against PW2 and repelled him. The court below mainly believed the oral evidence of PW2 young girl whose modesty was affected. It appears that there were some local mediators. Since justice was not given, complaint was given with delay to the Woman Superintendent of Police. PW4 stated that he saw the dispute between PW2 and accused and he separated them and rescued PW2 and he did not support the version that the accused touched her breasts and kissed her. However, trial court believed the evidence of PW2 a young girl notwithstanding eight days delay in filing the complaint to the Woman Superintendent of Police. Part of evidence of PW4 was also believed. It is settled law the for any question affecting modesty, some delay in filing the case is understood and in this case when modesty of an young girl is affected, local mediators interfered and finally the F.I.R was registered. After seeing the demeanor, trial court believed PW2. Appellate court also believed her evidence. I am of the opinion that no

grounds are made out to interfere in the concurrent findings which resulted in conviction in a revisional proceedings. However, we note that under Section 341 of IPC, he was sentenced to undergo Simple imprisonment for one month and for three months for the offence punishable under Section 354 of IPC. In appeal also confirming the conviction and sentence with regard to offences punishable under Section 354 was reduced to two months with fine of Rs.5,000/- for the offence punishable under Section 354 of IPC. Appellate court allowed as follows:

> "12. In the result:
>
> (a) The appeal is allowed in part.
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> (b) The verdict of guilty and conviction of the appellant under Sections 354 and 341 of IPC are upheld.
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> (c) The sentence imposed under Section 341 IPC is also upheld.
>
> (d) But the sentence imposed under Section 354 IPC is modified. In super session of the sentence imposed on the appellant by the learned Magistrate, he is sentenced under Section 354 IPC to undergo simple

> imprisonment for a period of two months and to pay a fine of Rs.5,000/-. The fine amount if realised shall be released entirely to PW2 as compensation under Section 357 (1) Cr.P.C. In default of payment of fine he is sentenced to undergo simple imprisonment for a further period of one month. The substantive sentences of imprisonment shall run concurrently."

I see no ground to interfere in the sentence imposed under Section 341 of IPC but reduce the sentence of imprisonment under Section 354 of IPC to one month. Imposition of fine of Rs.5,000/- or default sentence is not interfered. The substantive sentence can be suffered concurrently. With that modification in the sentence under Section 354 of IPC and confirming the conviction this revision petition is disposed of.

J.B.KOSHY, JUDGE

prp

J.B.KOSHY

Criminal.R.P.244 OF 2000

O R D E R

26th September, 2007